

# EXHIBIT D

GEORG-PETER KRAENZLIN - JULY 28, 2005

1

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

BABCOCK BORSIG POWER GmbH,

Plaintiff,

vs.

BABCOCK POWER, INC.,

Defendant.

\*  
\*  
\*  
\*  
\* CA No. 04 CV 10825-RWZ  
\*  
\*  
\*  
\*  
\*

ORAL DEPOSITION OF DR. GEORG-PETER

KRAENZLIN, produced as a witness at the instance of  
the Defendant, taken in the above-styled cause on  
the 28th day of July, 2005, from 10:06 a.m. to 3:19  
p.m., before Candice F. Flowers, a Certified  
Shorthand Reporter, at the offices of Babcock Borsig  
AG i.I., Duisburger Strasse 375, in the City of  
Oberhausen, Country of Germany, pursuant to the  
agreements as stated on the record and/or the  
Federal Rules of Civil Procedure.

**COPY**

Reported By:  
Candice F. Flowers, CSR  
European Reporting Service  
Meesmannstr. 52  
58456 Witten, Germany  
Tel/Fax: (011) 49 2302 277485  
www.EuropeanReportingService.com

GEORG-PETER KRAENZLIN - JULY 28, 2005

18

1 shall be in writing and signed by the parties  
2 hereto."

3 Do you see that?

4 A I have read it.

5 Q Okay. Now, are you aware of any  
6 amendment, change, or modification of this  
7 noncompetition agreement that exists?

8 A I'm not sure. I have to look it up in my  
9 files.

10 Q And those are the files that are in this  
11 building?

12 A Yes.

13 Q Okay. And since this goes to the very  
14 heart of this case, perhaps during the break or  
15 during the lunch recess, you might take a look to  
16 see whether any such document exists.

17 A No, I won't.

18 MR. WELSH: I will instruct the  
19 witness what to do with respect to that. Next  
20 question, please.

21 Q (By Mr. Comen) But as you sit here today,  
22 do you have a memory of whether such a document  
23 exists?

24 A I have a certain opinion which I don't  
25 want to express now, because I am not sure of it.

1 Q To the best of your knowledge, a document  
2 exists or does not exist?

3 MR. WELSH: I think the witness  
4 indicated that he's not sure.

5 Q (By Mr. Comen) If such a document did  
6 exist, it would be in your files in this building;  
7 is that correct?

8 MR. WELSH: Objection.  
9 You may answer if you are able.

10 A Not necessarily.

11 Q Where else might it be found?

12 A With the overall files of BBP GmbH,  
13 perhaps in the archive.

14 Q And where are those archives?

15 A On this real estate here somewhere,  
16 because this is more than 30 kilometers long, so it  
17 is in the cellar somewhere. You have to check.

18 Q And who has custody and control of those  
19 archives?

20 A The insolvency administrator.

21 Q And that's Dr. Helmut Schmitz?

22 A Correct.

23 Q And you have access to those archives,  
24 too, as the chief legal officer; is that correct?

25 A Through his people, yes.

# EXHIBIT E

060117BA1.txt

UNCERTIFIED ROUGH TRANSCRIPT 1

COURT REPORTER'S DISCLAIMER IN THE MATTER OF

Babcock Borsig Power GmbH  
VS.  
Babcock Power Inc., ETC.

5 The following deposition transcript of  
Georg-Peter Kraenzlin, taken on Tuesday, Januar 17,  
2006, is being delivered UNEDITED and UNCERTIFIED by  
the court reporter at the request of Attorneys Comen  
and Bello.

10 The party working with this product agrees not  
to share, give, copy, scan, fax, or in any way  
distribute this realtimed rough draft in any form  
(written or computerized) to any other party.

The party's experts, co-counsel, and staff may  
have limited internal use thereof with the  
understanding that this realtimed rough draft will  
be destroyed and replaced by the final edited,  
certified transcript when it is received by the  
party in due course.

15 The party agrees to indemnify and hold harmless  
Doris O. Wong Associates, Inc., and its court  
reporter Carol H. Kusinitz if the unedited and  
uncertified version of this transcript is cited by  
any party to this matter and becomes a point of  
contention within this case or any other  
controversy.

20

□

UNCERTIFIED ROUGH TRANSCRIPT 2

P R O C E E D I N G S

GEORG-PETER KRAENZLIN, Resumed

a witness called for examination by counsel for the  
Defendant, being duly identified by his German  
5 identification card and sworn, was examined and

060117BA1.txt  
to pay BPI. So there was not an agreement between

UNCERTIFIED ROUGH TRANSCRIPT 49

Babcock and Hitachi on the one side and BPI on the other side paying 7.5 million. It was exclusively Hitachi's decision to pay the 7.5 million.

Q At the end of that paragraph it says

5 "Reserving their rights to pursue any and all claims against BPI." Did anyone reserve their rights to pursue any and all claims against BPI?

A After the Hawaii meeting, when we were informed about the ultimate settlement between BPI  
10 on the one side and Hitachi on the other side -- Babcock Hitachi on the other side, Babcock Hitachi turned to us and said, "We only close the transaction with you on the acquisition of the rescue company, Babcock Borsig Power Systems if you  
15 pay us the 7.5 million." And we were refusing that and we asked for documentation about the settlement reached between BPI and Babcock Hitachi.

Having read the settlement, covenant not to sue, and this cooperation agreement, we learned that  
20 this agreement between BPI and BHK goes far beyond what we had to provide under the transaction agreement we entered into, we meaning BBP with Babcock Hitachi, what we had to provide under the closing conditions. And therefore, we refused to

UNCERTIFIED ROUGH TRANSCRIPT 50

pay 7.5 and negotiated that price or that amount.

060117BA1.txt

Q You negotiated it to splitting the 7.5 --

A Ultimately we agreed to a purchase price reduction for the consideration of the rescue

5 company by 3.75 million, and we, towards Babcock Hitachi, reserved our right to collect this money from BPI, because, from our perspective, BPI has forced us to accept this purchase price reduction, because if we had not agreed to that purchase price  
10 reduction, the rescue company would have gone bust due to lack of closing of the sale of the rescue company.

Q Before we take a break, and then we'll go to 1:15 and then we'll break for lunch -- if you  
15 want to take a bathroom break, just give me one more minute -- do you recall during the deposition in Germany that I asked you repeatedly about whether or not there was any document amending the Non-Competition Agreement?

20 A I do remember.

Q To your knowledge, as we sit here today, is there any such document?

MR. BELLO: Objection.

A Since I was also curious whether I were

0

UNCERTIFIED ROUGH TRANSCRIPT 51

going to find that, I checked it, and there is none.

MR. COMEN: All right. Why don't we take a break.

(Recess)

5 BY MR. COMEN:



060117BA1.txt

Q I show you a copy of the Non-Competition Agreement that's already been marked, and I'm directing your attention to Page 6, Paragraphs H and I, typically described as merger clauses.

10 A H and I.

Q Yes.

A (Reviewing document) Okay.

Q You're aware of those provisions, are you not, that those provisions are in the

15 Non-Competition Agreement?

MR. BELLO: Objection.

A Yes.

Q And you testified a few minutes ago that there has been no written amendment to the

20 Non-Competition Agreement, correct? That is your understanding?

A This is my understanding, right.

Q Then in light of the two paragraphs I just directed your attention to, are you claiming that

□

UNCERTIFIED ROUGH TRANSCRIPT 52

there nevertheless were some oral understandings that modify the words in the Non-Competition Agreement?

MR. BELLO: Objection.

5 A Can you repeat the question, please?

Q Are you claiming -- is it your position in this lawsuit that there were some oral understandings that modify the words that are written in the Non-Competition Agreement?

10 A It is my understanding that our claim is

# EXHIBIT F

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

BABCOCK BORSIG POWER GmbH,  
Plaintiff,

v.

BABCOCK POWER, INC.,  
Defendant and Third-Party Plaintiff,

v.

BABCOCK BORSIG, AG  
Third-Party Defendant.

C.A. No. 04 CV 10825-RWZ

NOTICE OF DEPOSITION

To: Steven J. Comen, Esq.  
Goodwin Procter LLP  
Exchange Place  
Boston, MA 02109

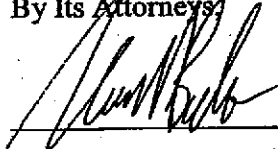
Please take notice that beginning at 10:00 a.m. on October 13, 2005, or on such other date agreed to by counsel, at the offices of Babcock Borsig AG, located in Oberhausen, Germany, the Plaintiff Babcock Borsig Power GmbH will take the deposition of Dr. Walter Kuna.

The deposition will be conducted before a Notary Public or other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed.

Respectfully submitted,

BABCOCK BORSIG POWER GMBH,

By Its Attorneys



Kenneth M. Bello, BBO #036630  
John F. Welsh, BBO #522640  
Josiah M. Black, BBO #632690  
Bello Black & Welsh LLP  
535 Boylston Street, Suite 1102  
Boston, Massachusetts 02116  
(617) 247-4100

Dated: August 29, 2005